

US EPA RECORDS CENTER REGION 5



514379

510 NORTH CENTRAL LIFE TOWER  
445 MINNESOTA STREET  
ST. PAUL, MINNESOTA 55101  
(612) 227-8017

P. O. BOX 848  
340 FIRST NATIONAL BANK BUILDING  
ROCHESTER, MINNESOTA 55903  
(507) 288-3156

312 FIRST NATIONAL BANK BUILDING  
WAYZATA, MINNESOTA 55391  
(612) 475-0373

## DORSEY & WHITNEY

A Partnership Including Professional Corporations

2200 FIRST BANK PLACE EAST  
MINNEAPOLIS, MINNESOTA 55402  
(612) 340-2600

TELEX: 29-0605  
TELECOPIER: (612) 340-2868

BECKY A. COMSTOCK  
(612) 340-2987

201 DAVIDSON BUILDING  
8 THIRD STREET NORTH  
GREAT FALLS, MONTANA 59401  
(406) 727-3632

SUITE 675 NORTH  
1800 M STREET N.W.  
WASHINGTON, D. C. 20036  
(202) 296-2780

30 RUE LA BOÉTIE  
75008 PARIS, FRANCE  
011 331 562 32 50

rec'd 6-26-84

Ind Neg Take

June 21, 1984

David Hird, Esq.  
Room 1260  
Environmental Enforcement Section  
Land & Natural Resources Division  
U.S. Department of Justice  
10th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Stephen Shakman, Esq.  
Minnesota Pollution Control Agency  
1935 West County Road B2  
Roseville, Minnesota 55113

Wayne G. Popham, Esq.  
Popham, Haik, Schnobrich,  
Kaufman & Doty, Ltd.  
4344 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402

Re: U.S.A., et al. v. Reilly Tar &  
Chemical Corporation, et al.

Gentlemen:

With this letter you will find a copy of a settlement package hereby presented by Reilly Tar & Chemical Corporation to the United States, the State of Minnesota and the City of St. Louis Park with copies to all other parties in the above-captioned matter. We have also enclosed a courtesy copy of the settlement package for each party's client.

The settlement package includes a proposed Consent Decree, a proposed Remedial Action Plan (RAP) and a comparative index of the federal and state RAP with Reilly's RAP. This settlement package is presented in response to a request of the State of Minnesota that Reilly submit this to the parties. It

DORSEY & WHITNEY

David Hird, Esq.  
Stephen Shakman, Esq.  
Wayne G. Popham, Esq.

June 21, 1984  
Page Two

has additionally taken into consideration points identified in Sandra Gardebring's letter to Thomas E. Reilly, Jr., dated May 10, 1984, David Hird's letter to me of May 31, 1984 and Steve Shakman's letter to me of June 7, 1984. This settlement package is Reilly's sincere response to the issues raised in those letters and is presented with the belief that a settlement can be accomplished in this matter among all of the parties. It is the outgrowth of a series of settlement discussions which commenced in September, 1980, as set forth in the enclosed chronology.

We invite your careful review of the provisions of the enclosed RAP. We believe that such a review would disclose that the funding by Reilly for immediate capital expenditures, plus the provisions for short-term and long-term contingencies, together with the City's commitment to the implementation of remedial measures, constitutes substantial compliance with every aspect of the plaintiff's remedial action plan as presented to Reilly in January, 1984. The enclosed comparative index identifying each of the elements in the federal and state RAP and the comparable elements in the Reilly RAP is intended to help all of the parties to understand this important point.

You should notice especially paragraphs 8.2.4 and 10.2.1 of the enclosed RAP because these paragraphs constitute further substantive refinement of Reilly's position. Paragraphs 10.2.1 and 13.6 deal with the gradient control system for the shallow (Drift-Platteville) aquifer and provide for a gradient control well system that will control the movement of contaminants in those aquifers in areas where total PAH or phenolics concentrations exceed 10 micrograms per liter. Paragraphs 8.2.4 and 13.4 provide for the installation of an additional gradient control well for the Prairie du Chien aquifer to be located near well 70 (old St. Louis Park Theater well) if that appears necessary based upon data to be accumulated within the next five years.

Notice also Section G of the Consent Decree wherein Reilly proposes to share the risk of excess costs to construct the granular activation carbon (GAC) treatment system with the City of St. Louis Park.

Reilly has also revised the "release" language in the consent decree in order to accommodate the settlement policies

DORSEY & WHITNEY

David Hird, Esq.  
Stephen Shakman, Esq.  
Wayne G. Popham, Esq.

June 21, 1984  
Page Three

of the United States and the State of Minnesota. The language in the current version is taken from the Consent Judgment in the matter of the Hyde Park Landfill and Bloody Run drainage area, United States v. Hooker Chemicals & Plastics Corp., et al., Civil Action No. 79-989, January 19, 1981. It also follows the language used in the Consent Judgment in the matter of the S-Area Site, United States v. Hooker, December 9, 1983. In a sense, this language constitutes a "fresh approach" to the previously polarized views of Reilly and the State of Minnesota, but is not at all novel from the United States' standpoint, since the language has been used by the United States in other cases.

In addition, this case is one in which the parties have expressly negotiated with respect to contingencies identified in the ERT report as well as in those negotiations. As a part of the settlement, Reilly will be delivering securities, the face value of which we believe to be satisfactory to the City, which under the Consent Decree will be committed to implement all contingencies when and if they become necessary. In view of that, we believe that Reilly is entitled to a form of release which eliminates any further exposure with respect to contingencies contemplated by the parties.

In a meeting between Eldon Kaul and Ed Schwartzbauer held on April 17, 1984, and in a meeting between Steve Shakman, Mike Hansel, Schwartzbauer and the undersigned on April 27, 1984, Ed indicated that Reilly would review once again its proposal with respect to reimbursement of the plaintiffs' past costs. We have made such a review, which has included extensive legal research and many discussions between this office and its client. Both Reilly and this office believe that the enclosed revised proposals constitute a good faith, fair proposal, consistent with nationally announced federal settlement guidelines for CERCLA cases. Specifically, Reilly is offering to the United States not only substantial compliance with the remedial aspects of the settlement at no cost to the United States, but also reimbursement of "Superfund" expenditures and a substantial portion of other site-related expenditures. If this proposal is not consistent with federal settlement policies, Reilly would be pleased to meet with representatives of the Federal government to explore the question of any shortfall between this proposal and such policies.

DORSEY & WHITNEY

David Hird, Esq.  
Stephen Shakman, Esq.  
Wayne G. Popham, Esq.

June 21, 1984  
Page Four

We believe that the State's claim for past costs (especially those incurred in the 1970's) stand on a very different legal basis from the restitution claims made by the United States under CERCLA. Accordingly, the State claim must, we believe, be separately evaluated in light of the common law and Minnesota Statutes. In addition, our view is that most of the State's costs are not only not reimbursable under controlling law but, in our view, were neither cost-effective nor reasonable. We would be willing to meet with representatives of the State of Minnesota to further discuss our offer to it in the amount of \$420,000 for past costs. However, it should be understood that the major concern of Reilly management in evaluating settlement possibilities is overall fairness. Accordingly, Reilly will not pay claims which have no valid basis in law or fact merely because of the threat of continued litigation expense.

This proposal, as indicated, appears to us to constitute substantial compliance with the United States remedial requests and our understanding of federal settlement guidelines. Moreover, the expressed willingness of the City of St. Louis Park to implement the Consent Decree with Reilly's financial support as described in the enclosed documents, would resolve all issues between Reilly and the City, if the claims of the United States and the State can be resolved on the basis proposed herein. In view of this, we believe that a prompt meeting between one or two persons representing Reilly, one or two persons representing the United States, one or two persons representing the State, and one or two persons representing the City should now be held in order to determine whether or not this case can be settled.

Reilly would like to resolve all disputes between all parties, if possible. However, if the parties are in substantial agreement on the remedy for the St. Louis Park water problem, but remain in disagreement concerning the claims for reimbursement of past costs, we suggest that we explore a settlement format which provides for the prompt implementation of the remedy and an agreement to arbitrate or litigate the claims for past costs.

The enclosed chronology may remind you that settlement discussions were commenced in this matter within one month

DORSEY & WHITNEY

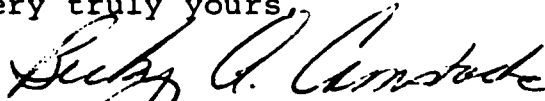
David Hird, Esq.  
Stephen Shakman, Esq.  
Wayne G. Popham, Esq.

June 21, 1984  
Page Five

from commencement of the federal action. It may also remind you that from the beginning, Reilly and its consultants have urged all plaintiffs to concentrate first on (1) establishing a criteria for drinking water quality, and (2) exploring the feasibility of drinking water treatment, with the forecast that if those two items were established, the additional remedial measures, such as limited gradient control well systems, would fall into place, if the remedy was not assumed in advance of the studies. We believe that this prediction has proved to be accurate and that the enclosed RAP, which contains the input of all parties, reflects that approach. We believe that all parties and their consultants can be proud of the contributions that all have made to this remedial plan. We hope that it can now be implemented and that the largely historical differences between Reilly and the State of Minnesota can now be put aside.

I will call Mr. Hird, Mr. Shakman and Mr. Popham within one week to arrange a meeting to discuss issues which affect their clients. In the meantime, your thoughtful attention to the matters raised in this settlement package will be greatly appreciated.

Very truly yours,



Becky A. Comstock

BAC:ml  
Enclosures

cc: All Counsel of Record (w/enclosures)  
✓ Robert Leininger, Esq.  
Paul G. Zerby, Esq.

## CHRONOLOGY OF SETTLEMENT NEGOTIATIONS

### U.S.A., et al. v. Reilly Tar & Chemical Corporation, et al.

- 9/9/80 Federal complaint served.
- 9/26/80 Luncheon meeting with U.S. Attorney. Reilly suggests a settlement conference.
- 10/9/80 Meeting at U.S. Attorney's office, Minneapolis, Minnesota.
- Representatives of Reilly, USA, MPCA, MDH and SLP attended.
- Dr. Fran McMichael, of Environmental Research and Technology (ERT), advises that first priorities are to set criteria for drinking water; then, if necessary, treat the water.
- 10/24/80 Meeting with U.S. Attorney who advises that Reilly must make a proposal to treat the swamp, remove contaminated water and soils contemporaneous with proposal for drinking water treatment. Reilly declines but offers cash settlement of one million dollars, which is rejected as inadequate.
- 2/81-8/82 Various letters are exchanged and conversations held between plaintiffs' counsel and Reilly's counsel in which the issues of site investigation and remedial plans are discussed and debated without agreement. Reilly's letters emphasize that there is no demonstrated contamination of water at the tap (i.e., drinking water) and that groundwater can be treated before it reaches the tap. Reilly's letters also emphasize that remedies should not be assumed in advance of the studies. ERT report of May 4, 1982 again emphasizes the importance of criteria and treatment.
- A letter from Reilly's counsel dated July 28, 1982 offers to prepare a comprehensive plan for the site.
- In early August, 1982, the parties agree to a meeting to be attended by technical and legal representatives for the purpose of discussing site investigation and remedial plans.

8/24/82 A meeting is held at U.S. Attorney's office, Minneapolis, Minnesota, where Reilly was invited to have ERT prepare a "comprehensive" plan for remedial action and the parties agree that ERT may attend "milestone" meetings with state contractor, CH2M Hill.

9/82-5/83 Dialogue between ERT and technical representatives of plaintiffs is conducted.

5/18-19/83 Reilly presents the ERT Report.

6/20/83 Reilly offers meetings between ERT and plaintiffs' technical representatives to discuss ERT Report.

7/19/83 MPCA letter to Reilly suggests technical meeting to explore areas of agreement and disagreement on ERT Report.

7/83 MPCA's Gardebring calls T. E. Reilly, Jr., suggesting they meet.

8/10/83 Reilly (Leshner) meets with MPCA (Heffern) to set up T. E. Reilly, Jr./Gardebring meeting in response to her call.

8/11-12/83 Reilly and State representatives meet to discuss ERT Report.

8/30/83 T. E. Reilly, Jr. meets with Sandra Gardebring in Chicago to establish a framework for settlement negotiations. They agree an intensive effort shall be made. Gardebring suggests that Reilly draft a Consent Decree.

9/26-27/83 Federal, State, Reilly representatives meet. At first meeting it is agreed that the technical personnel will meet without the lawyers.

10/11/83) Technical meetings and/or conference calls,  
 11/03/83) involving representatives of Reilly, United  
 11/21/83) States, Minnesota and City of St. Louis  
 12/15/83) Park designed to resolve remedial action  
 1/09/84) plan disagreements.

1/25-26/84 Plenary settlement sessions at MPCA with  
 1/31-2/1/84 Reilly, U.S., MN, SLP technical and legal representatives present.

U.S./MN present RAP and Consent Decree.

Reilly offers immediate contribution to implement RAP and \$1 million for "past costs" of the plaintiffs. State rejects "past costs" offer as insufficient. Talks suspended.

- 3/5-23/84 T. E. Reilly, Jr. and Sandra Gardebring have three telephone conversations where they agree to further technical negotiations; Gardebring advises Reilly to call Attorney General Humphrey to discuss the State's claim for legal fees.
- 3/30/84 T. E. Reilly, Jr. meets with H. H. Humphrey III at his office. Humphrey states MPCA cannot negotiate for Attorney General's past costs and that his deputy, Eldon Kaul (MPCA), and Ed Schwartzbauer (Reilly) should meet to do so.
- 4/17/84 Schwartzbauer meets with Kaul. Discussion relates to role of Attorney General in settlements, claim for past costs and State's attorneys' fees. Kaul asks Reilly to prepare a draft RAP and a Consent Decree which combines Reilly and SLP proposals.
- 4/23/84 Gardebring calls Reilly to state she is leaving MPCA and that she wants formal negotiations resumed before she departs. She renews her request that Reilly draft a Consent Decree.
- 4/27/84 Schwartzbauer and Comstock (Reilly) meet with Shakman and Hansel (MPCA) to understand factual basis of State's past cost claims.
- 5/1-3/84 Technical representatives of Reilly and SLP meet. SLP has developed its own RAP after meeting with MPCA. Technical representatives of Reilly meet with MPCA (Heffern and Hansel) to discuss SLP RAP and present Reilly proposed RAP. MPCA offers to convert Reilly RAP to narrative form. MPCA offers to resume settlement negotiations on May 15, 1984.
- 5/7/84 Reilly submits Consent Decree to plaintiffs per Gardebring request.



5/8/84 MPCA (Heffern) calls Reilly (Leshner) stating Reilly RAP and Consent Decree form no basis for further settlement discussions and cancels meeting for May 15.

5/9/84 Reilly, Leshner, Heffern conference call on Reilly's settlement proposal.

5/10/84 Gardebring letter to Reilly regarding deficiencies in Reilly proposal.

U.S. (Hird) letter to Comstock on settlement discussions with the U.S.

5/21/84 Kaul refuses further meetings in telephone conversation with Comstock until Reilly makes offer on past costs.

5/21/84 Hird indicates willingness to meet after consultation with the State.

5/25/84 Hird refuses further meetings without the State being present.

5/31/84 Hird letter to Comstock on Reilly's settlement proposals regarding U.S. past costs, the RAP and Consent Decree.

6/1/84 Comstock letter to Kaul and Hird regarding conflicting requests for offer on past costs of the plaintiffs.

6/7/84 Shakman letter to Comstock on State's position on offer for past costs.

COMPARATIVE INDEX OF FEDERAL/STATE 01/24/84  
DRAFT RAP AND REILLY 06/20/84 RAP

		<u>Fed/State</u> <u>01/24/84</u>	<u>Reilly</u> <u>06/20/84</u>			<u>Fed/State</u> <u>01/24/84</u>	<u>Reilly</u> <u>06/20/84</u>
<u>ACTION</u>	<u>SECTION</u>	<u>SECTION</u>	<u>ACTION</u>	<u>SECTION</u>	<u>SECTION</u>	<u>SECTION</u>	<u>SECTION</u>
INTRODUCTION	0.0	1.0	MT.SIMON HINCKLEY	5.0		6.0	
			SOURCE CONTROL			6.1	
DEFINITIONS	1.0	2.0	GRADIENT CONTROL			6.2	
			MONITORING	5.1		6.3	
GENERAL PROVISIONS	2.0	3.0	CONTINGENCY	5.2		13.3	
WELL NUMBERING	2.1	3.1					
DRINKING WATER			IRONTON-GALESVILLE	6.0		7.0	
CRITERIA	2.2	3.2	SOURCE CONTROL	6.1		7.1	
WELL CONSTRUCTION & CLOSURE	2.3	3.3	GRADIENT CONTROL			7.2	
PROJECT COORDINATOR		3.4	MONITORING	6.2		7.3	
IMPLEMENTATION			PRAIRIE DU CHIEN-JORDAN	7.0		8.0	
PROCEDURES/DISPUTE RESOLUTION		3.5	SOURCE CONTROL	7.1		8.1	
SURFACE WATER			GRADIENT CONTROL	7.2		8.2	
CRITERIA		3.6	MONITORING	7.3		8.3	
			HOPKINS WELL 3			8.4	
MONITORING(SAMPLING & ANALYSIS)			CONTINGENT				
FIRST YEAR	3.0	4.0	ADD'L GRADIENT CONTROL	7.4.1		8.2.4 & 13.4	
SAMPLING PLANS	3.1	4.3					
LABORATORY QA/QC	3.2	4.2	CONTINGENT				
NEW METHODOLOGY	3.3	4.2.4	GRADIENT CONTROL				
APPLICABILITY	3.2	4.1	TREATMENT	7.4.2		13.7	
WATER LEVELS	*	4.4					
DRINKING WATER			ST. PETER	8.0		9.0	
TREATMENT/SLP	4.0	5.0	SOURCE CONTROL			9.1	
10 & 15			GRADIENT CONTROL			9.2	
DESIGN	4.1	5.1	MONITORING	8.1		9.3	
CONSTRUCTION	4.2 & 4.3	5.2	CONTINGENCY	8.2		13.5	
TESTING	4.3	5.2.2					
OPERATION	4.4	5.3	DRIFT PLATTEVILLE	9.0		10.0	
MONITORING	4.5	5.4	SOURCE CONTROL			10.1	
CARBON REPLACEMENT	4.6		GRADIENT CONTROL	9.1		10.2	
SPENT CARBON			MONITORING	9.2		10.3	
HANDLING	4.7		CONTINGENCY	9.3		13.6	

Note: Blank indicates that the action or topic is not addressed directly in the RAP.

\* Addressed in various sections of the RAP (i.e., 6.2., 7.3.3, and 9.2.4).

	<u>Fed/State</u> <u>01/24/84</u>	<u>Reilly</u> <u>06/20/84</u>
<u>ACTION</u>	<u>SECTION</u>	<u>SECTION</u>
MULTI-AQUIFER		
WELLS	10.0	11.0
INVESTIGATION	10.1	11.1
OTHER WELL		
INVESTIGATION	10.2	11.2
WELL CLOSURE	10.3	11.1.3 & 11.2.4
NEAR-SURFACE		
CONTAMINATION	11.0	12.0
BORINGS	11.1	12.1
REPORT	11.2	12.1.2
FENCING	11.3	12.2
DEED RESTRICTIONS		12.3
LA. AVE/RT.7		
INTERSECTION		12.4
DEWATERING		12.4.2
FILLING	11.3.3	12.4.3
CONTINGENCIES	12.0	13.0
ADVISORY LEVELS	12.1.1	13.1
D.W.CRITERIA	12.1.2	13.2
D.W. TREATMENT	12.2	13.3
PDC-J GRADIENT		
CONTROL	7.4.1	13.4
ST. PETER GRADIENT		
CONTROL	8.2	13.5
DRIFT-PLATTE VILLE		
GRADIENT CONTROL	9.3	13.6
TREATMENT OF		
GRADIENT CONTROL		
DISCHARGES	7.4.2	13.7
SAMPLING & ANALYSIS		
PROTOCOL	APPENDIX A	4.2
PAH LIST	APPENDIX B	APPENDIX A